



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Patent Office Board of Appeals

APPLICANT: F. D. Oberhaus
SERIAL NO: 10/676,980
FILED: October 1, 2003
FOR: Componentry Assembled Free
Standing Wire Rack

GAU: 3637
EXAMINER: S.L. Purol
St. Louis, Missouri
Date: January 18, 2011
DN: 7349

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BRIEF FOR APPLICANT

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I. Real Party in Interest

The parties in interests in this particular application include the inventor, Fred D. Oberhaus, and the Company to whom he originally assigned this application, Industrial Wire Products, Inc., who subsequently assigned the patent application to Storage Solutions by IWP, Inc., both of Sullivan, Missouri.

II. Related Appeals and Interferences

There are no related appeals, or interference proceedings, pertaining to the subject matter of this patent application.

III. Status of Claims

The applicant filed this patent application in the United States Patent Office on October 1, 2003. An initial Office Action issued from the Patent Office on October 12, 2007. A response was made thereto. A final rejection issued from the Patent Office on June 4, 2008. It is from that final rejection upon which this Appeal was filed.

The examiner's final rejection rejected claims 4 through 14 of the application. These are the claims under appeal.

The specific status of all the claims of the application are as follows.

- 1-3 (Cancelled)
- 4. (Currently Amended)
- 5. (Original)
- 6. (Original)
- 7. (Original)
- 8. (Original)
- 9. (Currently Amended)
- 10. (Currently Amended)
- 11. (Currently Amended)
- 12. (Currently Amended)
- 13. (Currently Amended)
- 14. (Currently Amended)

IV. Status of Amendments

After appeal, and following the submission of a Brief upon Appeal, the examiner entered another Office Action on July 7, 2010. As a result, applicant filed an Amendment B in response to examiner's action after briefing upon appeal, on October 27, 2010. The examiner entered that Amendment for purposes of appeal, on December 3, 2010. During this post appeal process, applicant filed a Renewed Notice of Appeal on October 28, 2010. It is from that renewed notice that the brief herein is being filed, once again, on appeal, for this application.

V. Summary of the Claimed Subject Matter

Claim 14:

This invention relates to a componentry assembled free standing wire rack 1 (p.6, l.3) which includes a pair of end frames 2 and 3 (p.6, l.4) with each end frame incorporating at least one cross rod 5 (p.6, l.14) which are arranged horizontally within the structure, with the cross rod of each end frame being fixed at the same relative height, horizontally across the end frame, which respect to each end frame provided in the wire rack. This provides horizontal support for the shelving 4 (p.6, l.12), with each shelving provided for inserting partially within the end frames, at each end of the wire rack, and for resting upon the horizontally disposed cross rods 5, as can be noted. This provides for shelving intermediate a pair of the spaced end frames, with each shelving upon insertion within the end frames being pressure biased downwardly for pressure fitting within the end frames and resting upon their respective cross rods, when assembling the free standing wire rack. Each end frame is also provided with spaced vertical rods, as at 6 and 7 (p.6, l.13) with the cross rods connecting integrally across the pair of vertical rods in the wire rack assembly. Said shelving is provided for forced contact and pressure fitting between the vertical rods within each end frame, to add further stability in the erection of the free standing wire rack, when assembled (see Fig. 4).

Claim 4:

To attain that pressure fitting of the shelving between the pair of vertical rods in each end frame, each shelving is structured from a pair of shelf forming rods 16 and 17 (p.7, l. 27) with the pair of end rod at each end having a space therein between approximating or slightly greater than the thickness of each vertical rod, to provide for that pressure biasing of the shelving within each end frame when erected into a free standing wire rack.

Claims 5 thru 8:

Claims, such as claim 5, also defines at least one brace 10 (p.6, l. 20) that is diagonally arranged across the back of the assembled free standing wire rack, connecting with the pair of end frames 2 and 3 of the structured shown rack. And, as set forth in claims 7 and 8, there may be a pair of such diagonal braces, that cross each other at their approximate mid-point to furnish a secure interconnection of the rack together, when assembled (p.6, l.23, et al.).

Claim 10:

Claim 10 also defines the use of connecting sleeves 9 (p.6, l. 16) that are applied to the upper ends of the vertical rods 6 and 7, and to the downward ends of the upper rod 8 (p.6, l. 15), in the assembly of these free standing wire racks.

Claims 11 and 12:

The shelving may be of rectangular configuration, as shown in FIG 1, or the shelving may be square in configuration, as shown in FIG 5.

Claim 13:

The shelvings has bent down portions along both its front and back edges, as can be noted for the lower longitudinal rod 20 (p.8 ,l.11) and the shown upper longitudinal rods 18 (p.8, l. 9), which adds stability to the structured shelf, as it is located within the assembled wire rack.

This generally defines the structure of the componentry assembled free standing wire rack of this invention.

VI. Grounds of Rejection

The examiner had previously issued a final rejection of claims 4 through 14, under 35 U.S.C. § 103(a), as being unpatentable over Jurasek, U.S. patent No. 3,680,721, in view of applicant's prior patent No. 6,286,691, to Oberhaus. Then, in the post appeal rejection issuing from the examiner, she wants again reiterated the rejection under § 103(a). In addition, the examiner issued a rejection of claims 4 – 14 under 35 U.S.C. § 102(b) as being anticipated by Jurasek, patent No. 3,680,721.

VII. Argument

Claims 14, et al. :

The examiner has additional rejected claims 4 -14 as being anticipated by Jurasek '712 reference. In the new final rejection, the examiner has once again rejected claims 4 – 14 as being unpatentable over Jurasek '712, in view of Oberhaus, et al, '691, with said rejection being made under Section 103(a).

The concept of applicant's invention is to provide a free standing componentry assembled wire rack, wherein when all of the components are assembled together, particularly the end frames, and the shelving, there is sufficient structural rigidity between these components, to allow for the wire rack to remain free standing, even during usage. This is attained through the inner connection of components, even in a pressure fit, as recognized by the examiner, in the shelving for suspension from rafters, as set forth in the inventor's prior '691 patent, except that there are additional interconnections that make for the more stable assembly for the free standing wire rack, that is just not shown in the prior art. For example, as explained in claim 4, each of the shelvings has a pair of end rods 16 and 17, that embrace the vertical rods 6 and 7 of the contiguous end frame, that adds further stability to the structured assembly of this free standing wire rack together, so that the entire assembled rack will not shift laterally, and collapse, when in usage. This embracement of the vertical rods 6 and 7, by the shelving rods 16 and 17, which additionally is pressure fitted therein, adds stability to the structure of this rack, which is just not shown in the additional prior art cited by the examiner, in Jurasek, nor in the inventor's prior rafter shelving, as disclosed in the '691 patent. In addition, one should note that this shelving of Oberhaus, et al, in the '691 patent, does not show the style of a pair of end rods, as 16 and 17, that are only slightly greater than the thickness of each vertical rod, so as to position and grip the shelving pressured against these vertical rods 6 and 7, between those pair of end rods 16 and 17, to add further stability to the assembly and erection of the free standing wire rack, during usage.

A claim such as claim 14, and its dependent claim 4, identifies further structural definition that there is a forced pressure fit between the shelving, and

the vertical rods, and through contact with each other, and the embracement of the vertical rods 6 and 7 by the shelving rods 16 and 17, at each end of the rack, as a forced pressure fitting between these components as embodied in the assembly of this free standing wire rack, which makes it work. It is this forcing of this free standing wire rack, which provides it with structural integrity. It is this forcing of the shelving against the inner edges of the vertical rods in each of the end frames, and the embracement of the shelving of the end frame vertical rods, which when forced into an assembled position, in effect, adds stability to the structural integrity of the free standing wire rack, when assembled, and used, as distinct from what is shown in applicant's prior patent, which is a shelving that is suspended from rafters, during usage.

The shelving of Jurasek, such as its shelving 18, 19, 26, 27, and 92, all appear to simply rest upon their cross rods, with the cross rods being staggered one above the other, and in this manner, cannot be used for any type of a pressure fit between any of these particular shelves, and their various shown multiple vertical rods. In fact, as can be seen for the shelves 18, 19, 26, and 92, their front downwardly depending portions, as at 61 and 62, especially at their front, do not even make contact with the front vertical rods 33a and 33b, of their shown side frames as can be readily seen in FIG 1. of the Jurasek drawings, much less make a pressure fitting therein or between any vertical rods.

Unlike the prior art, when the primary features of the current invention, the forced contact, the pressure fitting, and the embracing of the vertical rods of the end frames, within the shelving, is just not attained in any manner or even suggested, or predicted, in the Jurasek reference, it is not seen how obviousness can be considered in view of Oberhaus, et al, since Oberhaus likewise does not show this type of assembled structure.

The remaining claims of this application all set forth further definition for the structure of this free standing wire rack assembly, and which claims are either directly or indirectly dependent upon the independent claim 14.

The examiner further rejected the claims of this application upon the Jurasek '712 patent, stating that Jurasek anticipates the subject matter of the claimed invention. For reasons as just previously reviewed, and how the Jurasek

downwardly depending portions of its shelving 18 and 19, do not even contact against any vertical rods of his structure, such as those rods 23 and 24, it is just not seen how Jurasek can be an anticipation of the claimed subject matter of this current invention. Claim 4 is quit clear in defining that its shelving is slightly greater in dimension than the space between the pair of vertical end rods, in order to provide for that pressure biasing therein, when the shelving is installed into the erected free standing wire rack. This is not shown in Jurasek, which is the essence of applicants current invention, and therefore, it is just not seen how anticipation can be provided, since the prior art lacks structure that can achieve the primary essence of applicant's claimed invention, in the first instance.

VIII. Conclusion

It is submitted that patentable subject matter is set forth in the remaining claims of this application. It is believed that the various structured components as embodied in this free standing wire rack, as distinct from a suspension rack is just not rendered so obvious to one of ordinary skilled in the art, notwithstanding the examiner's position. It is just not seen how the prior art makes it predictable that Jurasek could be modified in view of Oberhaus, to come up with the claimed subjected matter, when neither one shows the type of structural components, as set forth in the claims of this application, and which make the wire rack of this application work successfully, as compared to what applicant showed in this prior patent, or what is displayed within the assembly of Jurasek.

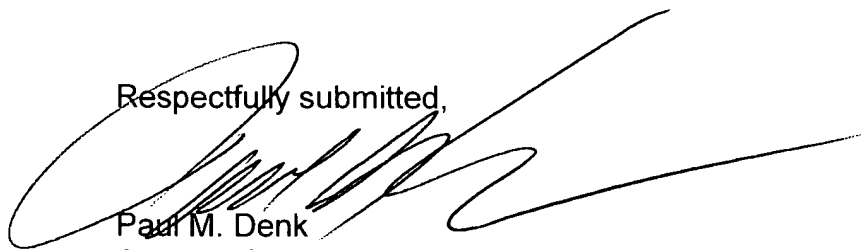
Likewise, Jurasek does not show structure that could even function in the manner of applicant's invention, as claimed, and therefore, it is submitted that anticipation is just not present.

In view of the foregoing, it is submitted that patentable subject matter is set forth in these remaining claims 4 through 14.

The Board's review of this matter would be appreciated.

If any additional charges are due, please debit our deposit account No. 040731.

Respectfully submitted,

A large, stylized handwritten signature in black ink, likely belonging to Paul M. Denk, is written over the typed name and address.

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APPENDIX (Claims)

Claims:

4. The wire rack of claim 14, wherein each shelving has a pair of end rods provided at each end of the shelving, the pair of end rods at each end having a space therein between approximating or slightly greater than the thickness of each vertical rod, to provide for pressured biasing of the shelving within each end frame when erected into a free standing wire rack.

5. The wire rack of claim 4 and including at least one brace extending between the end frames to structurally support the wire rack when assembled.

6. The wire rack of claim 5 wherein more than one brace is provide within the assembled wire rack, and extending between a pair of end frames.

7. The wire rack of claim 6 wherein a pair of braces are diagonally arranged.

8. The wire rack of claim 7 wherein the diagonally arranged braces between the end frames cross each other when installed within the assembled wire rack.

9. The wire rack of claim 14 wherein the vertical rods of each end frame incorporates an upper cross rod extending between and connecting with said vertical rods.

10. The wire rack of claim 14 wherein the vertical rods of each end frame end with an upper tip, a connecting sleeve provided for inserting upon and mounted extending upwardly from the upper end of each vertical rod, said connecting sleeve provided for reception of the lower end of a vertical rod of an end frame arranged thereabove and thereon providing for vertical stacking of the wire racks one upon the other.

11. The wire rack of claim 14, wherein the each shelving is rectangularly configured for extending between the end frames in which said shelving mounts.

12. The wire rack of claim 14, wherein each shelving is square in configuration, and connecting between a pair of end frames in the assembled wire rack.

13. The wire rack of claim 14, wherein each shelving has bends integrally extending downwardly along its front and back edges, to provide for a greater forced pressure fit in connecting of the shelving within the end frames of the wire rack when assembled.

14. A componentry assembled free standing wire rack including a pair of end frames, each end frame incorporating at least one cross rod arranged horizontally therein, the cross rod of each end frame being fixed at the same relative height with respect to each end frame provided in a wire rack, at least one shelving provided for inserting partially into the end frames, and resting upon the horizontally disposed cross rods, to provide for shelving intermediate a pair of spaced end frames, each shelving upon inserting within the end frames being pressure biased downwardly within the end frame and resting upon each of the respective cross rods when assembling the free standing wire rack, said end frames provided with spaced vertical rods, upon insertion of said shelving into an end frame said shelving embraces said vertical rods and pressure fits against said vertical rods during the wire rack assembly, the cross rods connecting to said vertical rods in the wire rack assembly, said shelving provided for forced contact and pressure fitting between the vertical rods within each end frame, to add further stability in the erection of the free standing wire rack when assembled.

APPENDIX (EVIDENCE)

There is no evidence that has been identified nor needs to be appended in this application.

APPENDIX (RELATED PROCEEDINGS)

There are no related appeals or interference materials that need to be considered, supplied, nor applied in this case.